

BEFORE THE MARYLAND STATE BOARD OF ELECTIONS

Joyce Ludwig

and

Liberty Rucker

and

Ruth Zlotowitz

Complainants

v.

Maryland State Board of Elections

Respondent

FINAL DETERMINATION

Statement of the Case

On December 30, 2004, Complainant Liberty Rucker filed with Linda H. Lamone, the State Administrator of Elections, an administrative complaint against the State Board of Elections alleging a violation of Section 302 of the Help America Vote Act of 2002. On January 3, 2005, Complainant Joyce Ludwig and Complainant Ruth Zlotowitz filed similar complaints. The complaints allege that voters reported to the Complainants that the voters requested provisional ballots at the polling place but were refused or that the voters were not informed by election judges of their right to a provisional ballot when their names did not appear on the precinct register. These complaints were consolidated for the purposes of a hearing.

A hearing was held on January 21, 2005 at 10:30 a.m. before Linda B. Pierson, the hearing officer designated by the State Administrator, at the offices of the State Board of Elections. The Complainants represented themselves, and Ross Goldstein represented the State Board of Elections.

This administrative procedure is governed by Chapter 33.01.05 of the Code of Maryland Regulations (COMAR). The purpose of the administrative complaint procedure is to provide a fair hearing and a speedy determination outside of the judicial system for an individual who asserts that an election official has violated the provisions of the Election Law Article relating to provisional ballots or that there has been a violation of Title III of the Help America Vote Act of 2002.

Issue

The issue is whether election judges at certain polling places in Maryland failed to offer the opportunity to vote a provisional ballot to voters whose names did not appear on the precinct register and whether election judges at certain polling places in Maryland refused to allow voters whose names did not appear on the precinct register the opportunity to vote a provisional ballot.

Findings of Fact

Having considered the testimony and evidence and having observed the witnesses I find, by a preponderance of the evidence, the following facts.

1. The Complainants, Joyce Ludwig and Liberty Rucker, were assigned by TrueVoteMD to act as poll watchers at polling places in Prince George's County. Complainant Ruth Zlotowitz was assigned by TrueVoteMD to act as poll watcher at a polling place in Howard County.
2. Several voters at C. Elizabeth Rieg Special Center in Bowie, Maryland, precinct 07-08, complained to Ms. Ludwig, in Ms. Ludwig's capacity as a poll watcher at this polling location, that they were registered or had been registered to vote but were either not notified by election judges that they had a right to vote a provisional ballot or denied the right to vote a provisional ballot after requesting one.
3. A dozen voters at Perrywood/Kettering Elementary School in Upper Marlboro, Maryland, precinct 03-04, reported to Ms. Rucker, in her capacity as poll watcher at this polling location, that they were told by election judges, including the chief judge, that they could not vote at this polling place because they were registered in another polling place or because their names did not appear on the voter rolls.
4. Voters at Elkridge Elementary School in Howard County reported to Ms. Zlotowitz that they were not offered the opportunity to vote by provisional ballot if they did not have identification at the polling place.
5. The Maryland State Board Elections provided to local election boards training materials for election judges, including training manuals and other materials, which correctly state the requirements regarding provisional ballots.
6. Guy Mickley, Election Information Specialist for the Howard County Board of

Elections, conducted training for Howard County election judges and this training included instruction concerning when and how to issue a provisional ballot.

7. Harold Ruston, Manager of Elections Operations for Prince George's County, conducted training for Prince George's County election judges and this training included instruction concerning when and how to issue a provisional ballot.

Discussion

Complainants claim that voters in Prince George's County and Howard County reported to Complainants that these voters were not offered the opportunity to vote by provisional ballot at the polling place or were denied the right to vote by provisional ballot by election judges at the polling place.

Section 302 of the Help America Vote Act states

(A) Provisional Voting Requirements - If an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to cast a provisional ballot as follows:

(1) An election official at the polling place shall notify the individual that the individual may cast a provisional ballot in that election.

(2) The individual shall be permitted to cast a provisional ballot at that polling place upon the execution of a written affirmation by the individual before an election official at the polling place stating that the individual is

(A) a registered voter in the jurisdiction in which the individual desires to vote; and

(B) eligible to vote in that election.

The Complainants provided testimony that numerous voters complained to the Complainants, in their capacity as poll workers, that they had registered to vote, they appeared at polling places to vote, their names did not appear on the precinct register of registered voters and election officials within the polling place did not offer them the opportunity to vote by provisional ballot. Some of these voters reported to Complainants that even after they requested a provisional ballot, election judges refused to provide the voters with a provisional ballot.

Without the opportunity to directly question the voters who reported complaints to the Complainants, I am unable to determine if these individuals were properly registered and denied a provisional ballot or if they were not registered in the jurisdiction, a requirement of HAVA Section 302, and denied a provisional ballot. Individuals in both of these categories, had they declared at the polling place that they were registered and eligible to vote should have been offered the opportunity to make a written affirmation of their eligibility and to vote by provisional ballot, and those ballots should have been transmitted to the local election board, whose responsibility it is to determine if the individual is eligible to vote.

The individuals who reported complaints to the Complainants were not present at the hearing to testify that they properly requested a provisional ballot and it was denied or that they were not notified by an election official that they might cast a provisional ballot. I find that the testimony of the Complainants recounting their personal interactions, at the time of the occurrence, with the individuals making complaints about the denial of provisional ballots was credible. Respondent provided no evidence that election officials at the subject polling places acted in accordance with Section 302 of HAVA or other appropriate procedures.

Respondent provided substantial documentary evidence that the State Board of Elections provided to the local election boards adequate and appropriate materials for the training of election judges, including training relating to the proper issuance of provisional ballots. Documents produced by Respondent as Exhibits include Guidelines for the Administration of Provisional Ballot Voting, a flow chart entitled "When to Issue a Voter a Provisional Ballot," Election Judges Training and Procedures Manual, a Provisional Ballot Checklist - Morning Set-up, and the Prince George's County 2004 Quick Reference Guide for election judges. Additionally, respondent introduced at the hearing or with its Post-Hearing Memorandum, affidavits of Harold Ruston, Manager of Elections Operations for the Prince George's County Board of Elections, and Guy Mickley, Election Information System Specialist for the Howard County Board of Elections. These two officials had the responsibility for and conducted training of election judges in their respective counties. Mr. Ruston and Mr. Mickley each affirm that the subject of provisional ballots was covered extensively in the training of election judges, that manuals and other instructive documents including information regarding the issuance of provisional ballots were provided to election judges, and that instructions were issued to election judges concerning the posting in each polling place of signs relating to the legal reasons for obtaining a provisional ballot.

The Respondent presented sufficient evidence that the State has properly enacted in State law the requirement of HAVA and that the State Board has promulgated appropriate regulations and procedures relating to the HAVA requirement. It also provided evidence that sufficient poll worker training materials were provided to local election boards.

Additionally, Respondent presented evidence that 48,396 provisional ballots were cast in Maryland in the 2004 General Election, indicating that the provisional balloting process worked well for many State voters.

The difficulties reported to Complainants by voters, about which the Complainants testified, highlight a serious problem within the election process - that the foundation for accurate and fair elections ultimately rests on the polling place interactions between voters and a group of citizens who are appointed to be poll workers. These individuals work one or two days every two years on 16-hour shifts, for minimal pay, in physical locations not designed to accommodate the procedures they are being asked to perform. Their "customers" are often annoyed at having to wait in long lines to perform their civic duty. They receive instruction and training materials prior to each election, but the regulations under which they operated and the procedures they must follow frequently change from one election to another. They must constantly adapt to the introduction of new technologies, new requirements and new expectations. In most instances, the majority of these poll workers perform admirably. The Complainants in this case acknowledged that, in denying voters provisional ballots, the election judges were not "maliciously disenfranchising" voters. Instead, Complainants suggested the need for better training for the judges.

The testimony of Complainants provides grounds to suspect that voters were denied the opportunity to vote by provisional ballot in the General Election of November 2, 2004. However, without the opportunity to question the voters who were denied provisional ballots, the fact finder is limited to second-hand descriptions of possible violations. Based on the record before me, I cannot make a finding that a violation of Section 302 of HAVA occurred.

ORDER

It is my determination that the Complainants have not established, by a preponderance of the evidence, that a violation of Title III, Section 302 of the Help America Vote Act of 2002 has occurred.

It is therefore, ORDERED that the Complainants complaints filed on December 30, 2004 and January 3, 2005 be dismissed.

Date

Linda B. Pierson
Hearing Officer

Appeal Rights

This is a final determination of the State Board of Elections and, under Regulation 33.01.05.08 of the Code of Maryland Regulations, may not be appealed in any State or federal court.